Filed 10/23/07 Spinetta v. Disney CA1/5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

PETER L. SPINETTA, **Plaintiff and Respondent,** **v.** **JAMES H. DISNEY,** **Defendant and Appellant.**	**A116153** **(Contra Costa County Super. Ct. No. N061627)**

James H. Disney appeals from a civil harassment restraining order imposed against him pursuant to Code of Civil Procedure section 527.6. He contends the declarations submitted against him were inadmissible, the evidence did not support the imposition of the restraining order and award of statutory attorney fees, and the order is void because it is overbroad and abridges his constitutional rights. We will affirm the order.

I. FACTS AND PROCEDURAL HISTORY

Appellant James H. Disney (Disney) is an attorney. Respondent Peter L. Spinetta (Judge Spinetta) is a judge of the Contra Costa Superior Court.

In 1994, Judge Spinetta presided over Disney's marital dissolution proceeding. Disney appealed Judge Spinetta's rulings. In years following, he sent letters to Judge Spinetta, insulting the judge and accusing him of bias. He also approached the judge and his wife at a store in 2004, lost his temper, and started shouting at Judge Spinetta that he was "stupid."

In 2006, Judge Spinetta received four additional letters from Disney, this time directed both to the judge and to his wife at their home address. Twice that year, Disney appeared in the planned community where the Spinettas reside. He also visited Judge Spinetta's courtroom, without any matter on the court's calendar, and glared at the judge from the gallery. Judge Spinetta felt compelled to report the letters and Disney's behavior to the court's Judicial Protection Unit. Sheriff's deputies thereafter informed him that Disney was loud and disruptive during an encounter outside the building where Judge Spinetta is assigned, and that Disney attempted to kick a deputy when taken into custody.

Judge Spinetta, fearing that Disney might harm him or his wife, filed a petition for temporary and permanent restraining orders.

A. PETITION

Judge Spinetta's request for orders to stop harassment, filed on October 6, 2006, set forth the above events. Accompanying the petition was a declaration of Judge Spinetta's attorney, Kimberly M. Drake, and four testimonial declarations from Judge Spinetta, Sergeant Justin Gregory, Deputy Louis Willett, and Deputy Neil Black.

1. Judge Spinetta's Declaration

Judge Spinetta's declaration described the letters he received from Disney in 2006, Disney's appearances in Judge Spinetta's courtroom and the community, what he learned about Disney's arrest and violent behavior while in custody, and the effect of Disney's conduct on the judge and his spouse. According to the declaration, Disney approached Judge Spinetta and his wife at the Concord Home Depot in 2004, appeared agitated and red-faced, and shouted and yelled that Judge Spinetta was "stupid." The declaration also recounts that Disney appeared at two events in the Spinettas' residential community in 2006, and on one occasion leered at the judge. The Spinettas left these events fearing another angry confrontation.

Attached as exhibits to Judge Spinetta's declaration were the four letters he received from Disney in 2006. Disney's letter of March 28, 2006 (exhibit 2), which the judge received on March 29, 2006, was written on the letterhead of Bosch-Disney, of

which Disney was purportedly vice-president and regional manager. The letter accused Judge Spinetta of "erratic and often stupid conduct," enclosed a copy of a portion of Jefferson's Evidence Benchbook on opinion evidence, asserted that the judge did not know the referenced evidentiary rule, and criticized Judge Spinetta's acceptance of a CPA's valuation in Disney's divorce proceeding. Written on this enclosure were the words: "you will not study this because" "you know it all." The letter further opined: "The problem with judges is that their head is often up their ass much of the time, their eyes and ears thinking how great they must be perched on such a pedestal."

Also enclosed in this letter was a five-page essay entitled, "THE TRUTH OF THE TORN-OFF WINDOW." In this writing, Disney describes in the third person an incident in which the attorney of his former wife (Olga), at her instruction, refused to sign the papers for the termination of their marital status. Feeling "betrayed, reduced, fooled, [and] yanked around," Disney "became infuriated," seeing it as a "calculated act, deliberately intended, to inflict mental anguish, and for no good purpose." (Bold omitted.) He went to Olga's house and, when she did not open the kitchen window quickly enough to discuss the matter, he "assist[ed]" her and, "to everyone's surprise, the window came off the building" and fell to the sidewalk. Disney's narrative continued: "Surprised, angered, frustrated, Jim mindlessly picked up the window from the sidewalk, and threw it on the concrete patio. Surprised again, the window didn't break—although Jim never intended it to break in the first place. Angered further by the unexpected, Jim picked up the hose connected below the kitchen window, turned it on, and sprayed water through the open kitchen window . . . ." In recounting how Judge Spinetta later assessed Disney for the window in the dissolution proceedings, Disney asserted that the judge "favored those of Italian ancestry," including Olga.

In the balance of Disney's essay, he set forth his reasons for believing that Olga had a "plan to destroy the marriage and Jim Disney," including a "conspiracy of disrespect toward Jim Disney," (bold omitted) interspersed with criticisms of "Stupido Spinetta." Disney concluded: "The point is that after 15 years, I continue to be falsely maligned **to my children** and **to people I know**, so that I am **shunned** by my children

and **shunned** by mutual acquaintances. Oh, yes, I believe she now speaks sometimes favorably of me, so she says, to my grandchildren. But disparagement is an ongoing problem. The disparagement damage can be lasting, and unrepairable. [Footnote omitted.] *This is my final effort* to fully disclose to my children and grandchildren information [*that*] *will survive me* so that they will know who I am. To give my grandchildren a grandfather who deserves respect." (Bold in original, italics added.) The tone and content of the letter was of great concern to Judge Spinetta, particularly because it mentioned a "final effort" and was addressed to the judge and his wife at their home.

Exhibit 3 to Spinetta's declaration is a letter postmarked May 6, 2006, which the judge received around the same date. It contains an essay entitled "NOT ENOUGH," in which Disney reflects on his "mortality and the mortality of others." One paragraph reads as follows: "On a Friday in May, I paid bills at the office and thought of my son's forty-fifth birthday. I announced to my associate that 'tomorrow is my son's birthday.' My associate asked, if I had been 'invited to a birthday party.' I responded, 'No, they treat me like shit!' My thoughts then turned to my mother and I said, 'God damn _____; they treated my mother like shit too; she never did enough." Handwritten on the page, with a line drawn to the blank in the prior sentence, was the word "ITALIANS." (Disney explains in his opening brief on appeal that his former spouse is of Italian ancestry.) The letter contains another version of "THE TRUTH OF THE TORN-OFF WINDOW" (bold omitted) that appeared in the second letter, summarizing the conduct that tore his marriage apart. He concludes with the line: "You will never understand."

Attached as exhibit 4 to Spinetta's declaration is a letter the judge received on or about August 16, 2006. It consists of a half-page essay in which Disney sets forth his efforts to secure social security income and medical benefits for his former spouse. On it is written: "Hey Spinetta—[¶] Get this—you only do criminal cases now—Stupido!" The letter was signed, "Jim," "your friend."

Correspondence Judge Spinetta received on or about September 20, 2006, is attached as exhibit 1 to his declaration. The first page reads, "NICE SEEING YOU THE

OTHER EVENING. WE'LL DO IT AGAIN." Judge Spinetta viewed this as a facetious reference to Disney seeing the Spinettas at a dance at their residential community on September 16, 2006. Disney's correspondence enclosed a copy of his March 28, 2006 letter and another copy of the excerpt from the Evidence Benchbook.

2. Bailiff Willett's Declaration

Judge Spinetta's courtroom bailiff, Deputy Sheriff Louis Willett (Willett), stated in his declaration that Disney visited Judge Spinetta's courtroom once or twice a quarter for six years, without official business. Each time, Disney sat in the gallery, angrily glared at the judge for 15-30 minutes, and then left.

3. Sergeant Gregory's Declaration

Sergeant Justin Gregory averred that he is the head of the Judicial Protection Unit, responsible for overseeing the security of Contra Costa County judges. According to Sergeant Gregory, who received a copy of Disney's letters from Judge Spinetta, Disney became a "person of interest" and the subject of an investigation due to his suspicious letters and his behavior towards the judge.

Sergeant Gregory recounted that he and Deputy Gogo confronted Disney on September 29, 2006, in the county law library in the A.F. Bray Courthouse. Sergeant Gregory informed Disney that his letters were unwelcomed and he would have to pass through the regular security screening at the courthouse.[1] Disney became increasingly agitated, loud, and disruptive, and Sergeant Gregory informed him that he had to leave the building but could return the next day through regular security screening. Disney left the building, but continued to be loud and disruptive and "defiantly attempted to reenter the courthouse and bypass security," despite Sergeant Gregory's directives to the contrary. Disney was arrested and transported to the main detention facility.

---

[1] It appears that Disney, like other attorneys, was permitted to bypass the regular courthouse security screening upon displaying his bar card and driver's license.

4. Deputy Black's Declaration

Sheriff's Deputy Neil Black, who worked as an escort at the main detention facility, recalled in his declaration that Deputy Gogo brought Disney to the detention facility on September 29, 2006. Disney refused to obey Deputy Black's orders, resisted the deputy's search of his person, appeared angry, threw his shoes at Deputy Black, struck the deputy with one of his shoes, and twice attempted to "mule kick" the deputy.

B. TEMPORARY RESTRAINING ORDER

At an ex parte hearing on October 6, 2006, Commissioner Judith A. Sanders granted a temporary restraining order (TRO) directing Disney (1) not to "[h]arass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, destroy personal property, keep under surveillance, or block movements" of Judge Spinetta or his spouse, and (2) not to "[c]ontact (directly or indirectly), telephone, send messages, mail, or e-mail" Judge Spinetta or his spouse. The order provided that, if Disney intended to visit Judge Spinetta's courtroom, he would have to first notify the screening deputy at the A.F. Bray Building (or the Judicial Protection Unit) and pass through regular security. The order further prohibited Disney from following Judge Spinetta around the courthouse. A hearing on Judge Spinetta's request for a three-year restraining order was set for October 19, 2006.

Disney was served with copies of the notice of hearing and temporary restraining order, the request for orders to stop harassment, and the declarations of Judge Spinetta, Sergeant Gregory, Deputy Willett, and Deputy Black, as well as their respective attachments and exhibits. The notice of the hearing advised Disney to file a "Form CH-110" (answer to request for orders to stop harassment) and attend the hearing if he wished to oppose Judge Spinetta's request for an injunction. The notice further advised that Disney could bring witnesses and other evidence to the hearing.

The case was assigned to the Honorable Peter Allen Smith, a retired judge formerly of the Marin County Superior Court.

C. HEARING

At the hearing on October 19, 2006, Judge Spinetta appeared by counsel and Disney appeared pro se. Also present were Sergeant Gregory and Deputy Gogo.

Disney brought to the hearing an "Answer to Request for Orders to Stop Harassment" and "Points & Authorities." In these documents, he denied the allegations of the petition and asserted his constitutional right of free speech and the right to attend public courts and practice law. In addition, Disney moved for a continuance, claiming he did not have sufficient notice of the hearing. The court denied the continuance.

After opening statements, Judge Spinetta's counsel offered to call as witnesses Sergeant Gregory and Deputy Gogo and have them "testify as to their personal observations." Ultimately, counsel did not call these witnesses and submitted Judge Spinetta's request for a restraining order on the written declarations.

The court then asked Disney whether he wanted to put on a defense or submit the matter on the declarations. Disney began by objecting to the declarations offered by Judge Spinetta, on the ground that Disney did not have an opportunity to cross-examine the declarants. Disney, however, did not request to cross-examine Sergeant Gregory, who was in the courtroom and available as a witness. Disney further objected to the declarations on the grounds of hearsay, lack of personal knowledge, and lack of foundation. He did not, however, request or obtain a ruling on these objections.

In addressing Judge Spinetta's allegations, Disney did not deny that he sent the letters to the judge and his spouse, went to Judge Spinetta's courtroom and glared at him, and appeared at the planned community where Judge Spinetta and his spouse reside. Instead, he argued at the hearing that his behavior was constitutionally protected, he saw the judge in the residential community by chance, and the judge had not suffered great or irreparable injury.

Disney did not offer any evidence to support his position, except his own declaration. In his declaration he asserted "[p]arenthetically" that he had never knowingly or intentionally been near the judge's home, he had never followed, pursued, or telephoned the judge or his family, and any "physical encounter" with the judge was

by happenstance. His declaration also argued that the TRO and proposed injunction were overbroad and violated his constitutional rights. Disney did not request permission to call any witnesses.[2]

D. THREE-YEAR RESTRAINING ORDER

The court issued a three-year restraining order, finding by clear and convincing evidence that Disney had engaged in a knowing and willful course of harassing conduct, which reasonably caused Judge Spinetta emotional distress. (See Code Civ. Proc., § 527.6, subd. (d).)

By way of explanation, the court summarized the evidence: "[Judge Spinetta] in his declaration lays out an overwhelming case of supporting the issuance of the restraining order. He discusses -- in his affidavit, he discusses specifically the course of conduct of [Disney] here starting in -- the case was in 1994. Judge Spinetta says he presided over a marital dissolution proceeding involving Mr. Disney. He states that in 2004 he saw him lose his temper and grow angry in his presence. And that Mr. Disney started shouting saying that he was stupid; that his wife and he had two more encounters with Mr. Disney since then. The Court finds that these statements in the petition are true. The Court -- Judge Spinetta states that Mr. Disney comes into the courtroom while court is in session, sits in the galley and glares at him, and at that time Mr. Disney did not have a matter in the courtroom calendar in which he was counsel of record. And on those occasions, Mr. Disney has left without saying a word. [¶] The record shows the affidavit of [Judge Spinetta] that Mr. Disney periodically mailed him strange letters commenting on his rulings, accusing him of bias and insulting him, and references made to those letters which are part of the petition. Since, however, it appears that Mr. Disney's conduct and conducts have escalated and become more frequent, unwelcome and alarming to [Judge Spinetta] and references made to the incidents set forth in the petition,

---

[2] Disney stated that he had expected to obtain a continuance, "which would allow [him] to prepare and prepare witnesses," including another judge who told him that Judge Spinetta had called Disney a "lousy lawyer," and the other judge disagreed. He does not challenge the denial of the continuance in this appeal.

Mr. Disney has sent the judge recent letters, included enclosures and illuminations about his feelings that he's been beelined [*sic*] by [Judge Spinetta], and [Judge Spinetta] believes that Mr. Disney harbors a tremendous amount of anger and hatred towards him, and [Judge Spinetta] believes Mr. Disney has grown increasingly obsessed with his rulings in his marital proceedings. His letters have regularly accused petitioner of bias and referred to him as stupid and a jerk. And so Mr. Disney's feelings are worrisome for [Judge Spinetta]. And he's fearful that [Disney] might act on those feelings and cause harm to him or to his wife, and I -- this Court finds that those feelings are not unreasonable based on the conduct that has been described in the affidavit in support of the restraining order."

The restraining order directs Disney not to "[h]arass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, destroy personal property, keep under surveillance, . . . block movements . . . [¶] [c]ontact (directly or indirectly), telephone, send messages, mail or e-mail" the Spinettas. The order further requires Disney to stay at least 100 yards away from the Spinettas, their home, their vehicles, and their place of work, including Judge Spinetta's courtroom, except that (1) Disney can visit the A.F. Bray Building so long as he first passes through regular security screening, and (2) Disney can visit Judge Spinetta's courtroom in the A.F. Bray Building, as an attorney of record, party or witness, so long as he first notifies security screening personnel and passes through regular security screening. In announcing the order, the court clarified: "[t]he Court intends that the order should provide that it is not intended in any way to interfere with legitimate practice of your profession in the, you know, in the practice of your profession in the buildings and property necessary for you to do so . . . ."

Before the trial court signed the restraining order, the court and parties further discussed its scope. Disney complained that the order excludes him from Rossmoor (the residential community where the judge lives) and Disney was invited to a dance there. The court encouraged the parties to work together and negotiate the technical aspects of the order: "THE COURT: Let me tell you this: If you have some issue other than the -- some issue on the technical aspects of the order, perhaps you and Ms. Drake can come to

some accommodations about Rossmoor and other places." Disney refused to do so: *"I will not negotiate with her*. I'm trying to express my rights here. I'm a vigorous advocate. If this shows you anger or some offense against you or the judiciary system, it's wrong. I'm a vigorous advocate. And when he stands over there, he's anticipating violence. I know it. I've been around too long. I'm sorry, but I'm a direct person, and I speak often too much to a fault, but I'm trying to say to you -- I'm trying to say that this is an unlawful restraint." (Italics added.)

Disney also asserted that the post office was within 100 yards of the A.F. Bray Building. At the suggestion of Judge Spinetta's counsel, the court orally struck the words "jobs or workplaces of the person" from the stay-away portion of the order, in order to clarify that Disney could still go to that post office. The written restraining order, however, does not reflect this modification.

The court asked Disney to submit a proposed order to Judge Spinetta's counsel which he was most concerned. The record does not indicate he did so. Nor does the record indicate that he protested the written order on the ground that it did not accurately reflect the oral rulings of the court.

In his petition and at the hearing, Judge Spinetta requested $1,700 in attorney fees and $175 in service fees and court costs. Disney did not articulate any objection to the award, and the court awarded attorney fees in the sum of $1,200.[3]

This appeal followed.

---

[3] The colloquy concerning the attorney fee award reads: "THE COURT: What do you think about [Judge Spinetta's request for $1,700 in attorney fees and $175 for service fees and court costs]? [¶] MR. DISNEY: I can only relate this to the fundamental issues in this case. It's going to cost me several thousand dollars which I believe has been very expensive to me. I've got a criminal case against me now. I was beat up in the jail. If I had a chance, I know those issues aren't relevant here, but I can tell you that I did nothing in the jail. I did nothing to get arrested. [¶] THE COURT: I have not considered that as a primary element of my findings in this case in support of the restraining order. [¶] MR. DISNEY: I know, but I -- I -- [¶] THE COURT: All right. I'll award attorneys' fees in the sum of $1,200."

II. DISCUSSION

Disney contends: Judge Spinetta's petition and the testimonial declarations were inadmissible; there was insufficient evidence in the declarations to support the judgment and no substantial evidence to support the award of attorney fees; and the restraining order violates his constitutional rights and is thus void. We address each of these contentions, but in the following order: (1) the substantial evidence supporting the three-year restraining order; (2) the admissibility and sufficiency of the declarations; (3) constitutional issues in connection with the restraining order; and (4) the substantial evidence supporting the attorney fee award.

A. SUBSTANTIAL EVIDENCE SUPPORTING THE RESTRAINING ORDER

Code of Civil Procedure section 527.6[4] establishes a procedure for expedited injunctive relief to persons suffering harassment. A TRO may be obtained, with or without notice, upon an affidavit showing reasonable proof of harassment and great or irreparable harm to the plaintiff. (§ 527.6, subd. (c).) The TRO generally lasts for not more than 15 or 22 days, within which time a hearing is held on the petition for an injunction. (§ 527.6, subd. (d).) The injunction shall issue, for a term of not more than three years, if the judge finds unlawful harassment by clear and convincing evidence. (§ 527.6, subd. (d).)

Harassment is defined as "unlawful violence, a credible threat of violence, *or* a *knowing and willful course of conduct* directed at a specific person that seriously alarms, annoys, or harasses the person and that serves no legitimate purpose." (§ 527.6, subd. (b), italics added.) "'Course of conduct'" is "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or *sending harassing correspondence* to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, fax, or computer e-mail."

---

[4] Unless otherwise indicated, all further section references are to the Code of Civil Procedure.

(§ 527.6, subd. (b)(3), italics added.) The course of conduct must by its nature be "such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff." (§ 527.6, subd. (b).) Constitutionally protected activity is excluded from the definition of a course of conduct. (§ 527.6, subd. (b)(3).)

We review the court's issuance of an injunction under section 527.6 for an abuse of discretion, provided substantial evidence supports the court's factual findings. (See *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 912 [review of permanent injunction].)

1. Substantial Evidence

The evidence offered by Judge Spinetta at the hearing provided substantial evidence of Disney's knowing and willful course of conduct directed at the judge, which seriously alarmed, annoyed, or harassed the judge and served no legitimate purpose, and which would cause a reasonable person to suffer substantial emotional distress and actually did cause substantial emotional distress to Judge Spinetta.

As to Disney's course of harassing conduct, Judge Spinetta's declaration described and attached the four letters he received from Disney within a few months during 2006, addressed to the judge and his spouse at their home. In addition, the declaration recounted an incident where Disney lost his temper and yelled at the judge in public, repeatedly went to his courtroom and glared at him, and appeared three times in the judge's residential community and, on one occasion, leered at him. After one such encounter, the judge received a letter from Disney stating, "NICE SEEING YOU THE OTHER EVENING. WE'LL DO IT AGAIN." All of the letters reflected Disney's disdain for the judge and his belief that he was harmed by the judge's handling of his divorce proceeding; one of the letters speaks of Disney's "final effort." The declaration also recounts how he learned of Disney's attempt to breach security at the A.F. Bray Building, to which Judge Spinetta is assigned, as well as Disney's hostile and aggressive behavior while in custody. The declarations of Sergeant Gregory, Bailiff Willett, and Deputy Black confirmed these events.

As to the emotional impact of Disney's conduct, Judge Spinetta explained his worry that Disney's obsession had increased over time, the alarm and emotional distress he suffered from Disney's harassment, and the fact that Disney's letters and behavior had concerned him enough that he reported them to the Judicial Protection Unit. From this evidence it may reasonably be inferred that Disney's harassing course of conduct caused Judge Spinetta substantial emotional distress, and would cause substantial emotional distress in a reasonable person.

At the hearing, Disney did not dispute that the events alleged by Judge Spinetta occurred. Both at the hearing and in this appeal, Disney admits that Judge Spinetta presided over his divorce, he mailed the "name-calling letters" to the judge, he encountered the judge in the community where the judge resides, he went to the judge's courtroom without official business and glared at him, he was asked to leave the A.F. Bray Building, and he attempted to reenter the building without going through security. Disney merely contends that these events should be construed as benign and the judge was not really distressed. He argues, for example, that calling Judge Spinetta "stupid" at Home Depot in 2004 showed a "stale in time disrespect toward a judge, but not much more," and that words and phrases such as "stupid," "jerk," "stupido," and "head up your ass" would do nothing more than offend his vanity. The meetings in the residential community, Disney insists, were by happenstance, observing or glaring in the courtroom is common and does not foretell future harm, and his presence in the law library merely indicated legal research. Under the substantial evidence standard of appellate review, however, it is not our role to weigh the credibility of the witnesses or to choose between competing inferences from the evidence. We determine only if there is evidence from which a reasonable jury *could* draw the inference reached by the trial court. We conclude the evidence is sufficient in this regard.

Disney suggests that section 527.6, subdivision (b) required the judge to show "enduring outrageous conduct causing substantial emotional distress," a "clear and present danger" or a "serious substantive evil." To the contrary, the statute requires only that the plaintiff prove a "course of conduct" that would cause a reasonable person to

suffer substantial emotional distress and that actually caused substantial emotional distress to the plaintiff. (§ 527.6, subd. (b).)

Disney also refers us to *Schild v. Rubin* (1991) 232 Cal.App.3d 755 (*Schild*) for the proposition that mere annoyances must be tolerated. In *Schild*, the court held that there was insufficient evidence of substantial emotional distress for the issuance of an injunction under section 527.6, where the cause of the purported distress was merely the noise of a ball and chatter by several people playing basketball in a neighbor's yard at reasonable times of the day, for no more than 30 minutes a day, no more than five times a week. (*Id*. at pp. 758-759, 763.) The activities in *Schild* pale in comparison to Disney's conduct and letter-writing campaign, targeting the judge and his wife personally at their home.

Lastly, Disney contends that *Russell v. Douvan* (2003) 112 Cal.App.4th 399 requires a threat of future harm that does not exist here. In *Russell*, the trial court had issued a restraining order on the basis of a single act of violence by the defendant, believing that a single act was sufficient. (*Id*. at pp. 400, 402.) The Court of Appeal reversed, observing that the restraining order requires an indication that the harassment will continue in the future. Although the appellate court recognized that a single violent act in some circumstances could support the conclusion that future harassment was highly probable, the trial court would have to make such a finding. (*Id*. at p. 404.)

Here, by contrast, there is no indication that the trial court operated under any misapprehension that a restraining order could be issued based on a single act of violence. Moreover, the evidence demonstrated not just a single act, but a course of conduct creating a high probability of future harassment. Indeed, the court implicitly made such a finding when it stated: "[Judge Spinetta] is fearful that [Disney] might act on those feelings and cause harm to him or to his wife, and I -- this Court finds that those feelings are not unreasonable based on the conduct that has been described in the affidavit in support of the restraining order."

Substantial evidence supported the factual findings of the trial court, and the issuance of the restraining order was not an abuse of discretion.

B. ADMISSIBILITY AND SUFFICIENCY OF RESPONDENT'S DECLARATIONS

Disney argues that the declarations were insufficient to establish the proof necessary for issuance of the restraining order, because: (1) Disney objected to the declarations on grounds of authentication, lack of personal knowledge, and hearsay; (2) no oral testimony was provided; (3) Disney was unable to cross-examine the declarants; and (4) Judge Spinetta's petition was not verified. He also argues that Judge Spinetta's proof was subject to a motion for judgment under Code of Civil Procedure section 631.8.

1. Authentication, Lack of Personal Knowledge, and Hearsay

At the hearing, Disney objected to the declarations on grounds of hearsay, lack of personal knowledge, and lack of foundation. He failed to obtain a ruling on these objections, however, and therefore they are not preserved for appeal. (*Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 670, fn. 1 [objections to declarations opposing summary judgment motion], superseded on other grounds in *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 767-768; *Slauson Partnership v. Ochoa* (2003) 112 Cal.App.4th 1005, 1014, fn. 4 [objections to declarations opposing anti-SLAPP motion to strike]; *Juarez v. Boy Scouts of America, Inc*. (2000) 81 Cal.App.4th 377, 398, fn. 7 [hearsay objection].)

The foundation and personal knowledge objections are also meritless for other reasons. As to foundation, Disney argues that the declarations were not properly authenticated. (Evid. Code, §§ 1400, 1401; see Evid. Code, § 403, subd. (a)(3) [authentication as preliminary fact].) Authentication in this context merely requires a threshold showing that the evidence is what it purports to be. (Evid. Code, § 1400.) Here, each of the declarations is signed, identifies itself as a declaration of the signatory, bears the name and address of counsel who presented the declarations to the court, and describes matters known to a limited number of people including the declarants. (Evid. Code, § 1421.) Disney provides no reason to conclude that the documents are not what they purport to be. It would not have been an abuse of discretion for the trial court to overrule Disney's authentication objections.

As to personal knowledge, each of the declarations asserted under penalty of perjury that the attested facts were stated of the declarant's own personal knowledge, except as to matters stated on information and belief. Disney has not identified in this appeal any particular statement in the declarations that was inadmissible due to lack of personal knowledge.

2. Declarations Rather Than Oral Testimony

Disney points out that there was no testimony at the hearing except the written declarations. He argues that the proof required to obtain an anti-harassment order must come from oral testimony, citing section 527.6, subdivision (d), and *Schraer v. Berkeley Property Owners' Assn.* (1989) 207 Cal.App.3d 719, 730-733 (*Schraer*). He is incorrect.

In relevant part, section 527.6, subdivision (d) provides: "At the hearing, the judge *shall receive* any *testimony* that is relevant, and may make an independent inquiry." "Testimony" may be taken by affidavit (or declaration under penalty of perjury, see §§ 2003, 2015.5), by deposition, *or* by oral testimony. (§ 2002; *Schraer, supra,* 207 Cal.App.3d at p. 733, fn. 6.) Nothing in section 527.6 expressly limits "testimony" to oral testimony. According to the plain language of the statute, therefore, the trial court is obligated to receive "any testimony that is relevant," if offered by a party, whether the testimony be in the form of written declarations, depositions, or oral testimony. (*Schraer, supra,* at p. 733, fn. 6.)

Schraer is not to the contrary. In *Schraer,* the trial court denied requests to put on oral testimony and cross-examine declarants, and granted an anti-harassment restraining order based only on written declarations, attached exhibits, and the argument of counsel. On appeal, the order was reversed. The appellate court held that the fact that testimony *can* be taken by written declaration (§ 2002) does not permit a trial court to *limit* a party to written declarations: the court in a section 527.6 proceeding "may not arbitrarily limit the evidence presented to written testimony only, *when relevant oral testimony is offered*." (*Schraer, supra,* 207 Cal.App.3d at p. 733, fn. 6, italics added.) "Thus, *if it is offered*, relevant oral testimony must be taken from available witnesses, and the trial

court cannot issue an injunction unless it finds, by clear and convincing evidence, that unlawful harassment already exists in fact." (*Id*. at p. 733, italics added.)

Schraer did not hold that written declarations were unacceptable or inadmissible, or that the requisite proof for issuing a restraining order required oral testimony. To the contrary, the court stated: "We do not hold, nor do we mean to imply, that every proceeding for an injunction under [section 527.6, subd. (d)] must in all instances proceed with oral testimony instead of upon affidavits or declarations, regardless of the circumstances. Certainly, a full-fledged evidentiary hearing with oral testimony from all sides may not be necessary in all cases. . . . Both sides may offer evidence by deposition, affidavit, or oral testimony, and the court *shall receive* such evidence, subject only to such reasonable limitations as are necessary to conserve the expeditious nature of the harassment procedure set forth by [section 527.6]." (*Schraer, supra,* 207 Cal.App.3d at p. 733, fn. 6, citations omitted, italics in original; see *Ensworth v. Mullvain* (1990) 224 Cal.App.3d 1105, 1110 (*Ensworth*) [finding "[t]he *Schraer* court did not hold that the requisite clear and convincing proof of a petitioner's substantial emotional distress had to be in the form of the petitioner's direct testimony that he or she suffered such distress."].)

In the matter before us, the trial court did not preclude the parties from putting on oral testimony. The court *asked* Disney whether he wanted to put on his defense or submit the matter on declarations, and Disney relied on his own declaration and argument, without attempting to call any witnesses, even though Sergeant Gregory and Deputy Gogo were in court and available to testify. *Schraer* does not help Disney's cause.[5]

---

[5] Disney also relies on Evidence Code section 711, arguing that a trial witness can be heard only in the presence and subject to the examination of all the parties. Evidence Code section 711 actually reads: "At the trial of an action, a witness can be heard only in the presence and subject to the examination of all the parties to the action, *if they choose to attend and examine*." (Italics added.) In this case, Disney did not "choose to . . . examine." Other cases on which Disney relies are also distinguishable: in *Ancora-Citronelle Corp. v. Green* (1974) 41 Cal.App.3d 146, 149-150, the court held that an injunction may not issue where the complaint was not verified and the declarations did

At our invitation, the parties have submitted letter briefs on our Supreme Court's recent decision in *Elkins v. Superior Court* (2007) 41 Cal.4th 1337 (*Elkins*). In *Elkins*, a trial court scheduling order and a local court rule provided that, in marital dissolution trials, parties were *required* to present their case by means of written declarations: direct examination was not allowed except in "unusual circumstances," although upon request parties could cross-examine the declarants. (*Id*. at p. 1344.) In addition, parties were required to establish in pretrial declarations the admissibility of all exhibits they sought to introduce at trial. (*Ibid*.) Applying these rules, the petitioner's pretrial declaration failed to establish the evidentiary foundation for 34 of his 36 exhibits, and he was prevented from presenting his case or establishing a foundation for the exhibits through oral testimony. (*Id*. at pp. 1344-1345.)

The California Supreme Court held that the local rule and scheduling order were invalid, because they conflicted with the Evidence Code and Code of Civil Procedure. (*Elkins, supra,* 41 Cal.4th at p. 1345.) The court observed that marital dissolution *trials* proceed under the same general rules of procedure governing other civil trials (Fam. Code, § 210), and written testimony in the form of a declaration constitutes hearsay (Evid. Code, § 1200). (*Elkin, supra,* at p. 1354.) The court found no applicable exception to the hearsay rule for contested marital dissolution trials*:* "Although affidavits or declarations are authorized in certain *motion* matters under *Code of Civil Procedure section 2009*, this statute does not authorize their admission at a contested *trial* leading to judgment."[6] (*Elkins, supra,* at p. 1355, italics in original.) Thus, the local court rule and

---

not contain sufficient evidence; in *Davis v. Washington* (2006) 126 S.Ct. 2266, 2278, the court reversed a conviction for domestic battery because the victim's statement in an affidavit given to police was testimonial and thus subject to the Confrontation Clause. Here, the declarations were sufficient and Disney does not establish that the Confrontation Clause, generally applicable to criminal proceedings, applies to a section 527.6 hearing.

6 Section 2009 reads: "An affidavit may be used to verify a pleading or a paper in a special proceeding, to prove the service of a summons, notice or other paper in an action or special proceeding, to obtain a provisional remedy, the examination of a witness, or a

order were "inconsistent with the hearsay rule to the extent they render written declarations admissible as a basis for decision in a contested marital dissolution trial." (*Id*. at p. 1356.) "*Permitting* oral testimony" at trial, the court concluded, is consistent with the standard practice of presenting evidence through the oral testimony of witnesses testifying in the presence of the trier of fact. (*Id*. at p. 1357, italics added.)

Elkins does not compel reversal in this matter. In the first place, Disney has not persuaded us that the holding in *Elkins* would necessarily preclude the use of declarations at a section 527.6 hearing. Section 527.6 provides that the court *shall* admit testimony—which by statutory definition includes affidavits—if the testimony is "relevant." The statute does not refer to any evidentiary basis for excluding evidence other than relevance, such as hearsay. It may be inferred, therefore, that the Legislature intended the use of declarations as one means of introducing evidence in order to obtain a restraining order against harassment. Indeed, the use of declarations in a section 527.6 hearing is consistent with the unique purpose of the statutory procedure—to provide an efficient and expeditious means of protecting the peace and safety of an individual subject to harassment. (*Schraer, supra,* 207 Cal.App.3d at p. 733, fn. 6 [expeditious nature of § 527.6 proceeding]; *Ensworth, supra,* 224 Cal.App.3d at p. 1113 ["the Legislature created section 527.6 to "'protect the individual's right to pursue safety, happiness and privacy as guaranteed by the California Constitution.'"].)

Moreover, *Elkins* is limited to actual *trials*, and its "conclusion does not affect hearings on motions." (*Elkins, supra,* 41 Cal.4th at p. 1345, fn. 1.) As the *Elkins* court observed, hearsay declarations may be used in motion hearings pursuant to section 2009 (*Elkins, supra,* at p. 1355), which applies to hearings for obtaining provisional remedies. As a general matter, provisional remedies include injunctions to maintain the status quo pending the resolution of a civil action. Although the restraining order obtained under section 527.6 is not necessarily collateral or ancillary to another civil proceeding, it

---

stay of proceedings, and in uncontested proceedings to establish a record of birth, or upon a motion, and in any other case expressly permitted by statute."

provides for injunctive relief that imposes neither civil liability (other than possibly attorney fees and costs) nor criminal sanction against the defendant. Furthermore, we note that the Legislature chose to include the section on anti-harassment injunctions (§ 527.6) in Title 7 of the Code of Civil Procedure, which is entitled "Other *Provisional Remedies* in Civil Actions." (Italics added.) The Legislature also characterizes injunctions as *orders* (§ 525) and, unlike a judgment after a trial, an injunction may be modified or dissolved upon a showing of a material change of facts or law or in the interests of justice (§ 533).

Nonetheless, we need not (and do not) decide whether *Elkins* applies to section 527.6 hearings, because *Elkins* is distinguishable from the instant case for other reasons. *Elkins* held that a local court rule *requiring* presentation of evidence by written declaration rather than by oral testimony was inconsistent with the hearsay rule. Here, however, neither a court rule nor the trial court required the parties to present their evidence by written declaration. Unlike the plaintiff in *Elkins*, Disney was free to call his own witnesses. He chose not to.

Thus, to the extent *Elkins* applies to section 527.6 hearings, it is significant to this case only in its confirmation that the declarations submitted by Judge Spinetta were subject to a hearsay objection. Disney made this objection, but, as discussed *ante*, he failed to preserve the objection for appeal by failing to obtain a ruling at trial.

Furthermore, any error in admitting the declarations over Disney's hearsay objection was harmless, in light of Disney's admission at the hearing of the events the declarations depicted. Disney did not dispute that he sent the letters, went to the judge's courtroom, and encountered him in the Spinettas' residential community, but merely challenged the nature of his intent and the extent of the judge's distress. From the undisputed fact of Disney's letters and his conduct toward Judge Spinetta in his courtroom and in public, a reasonable trier of fact could conclude, upon clear and convincing evidence, that Disney's course of conduct was harassing, willful, knowing, and without legitimate purpose, and was the type that would cause, and in fact did cause, substantial emotional distress.

3. Right to Cross-Examine Judge Spinetta's Declarants

Disney contends he was denied his right to confront and cross-examine adverse witnesses under the Sixth Amendment of the United States Constitution and article I, section 15 of the California Constitution, citing *Pointer v. Texas* (1965) 380 U.S. 400. His reliance on the Confrontation Clause of the Sixth Amendment is misplaced, as the Confrontation Clause generally pertains only to criminal proceedings. (U.S. Const., 6th Amend.)

Even if Disney had a due process right to cross-examine adverse witnesses, he fails to establish that he invoked this right or that such right was violated.[7] Although he objected to the *admission of the declarations* on the ground that the declarants were not subject to cross-examination, he did not actually pursue the examination of any of the witnesses against him. He did not subpoena the declarants to assure their availability, or even attempt to cross-examine Sergeant Gregory, who was in court and available to testify. It therefore cannot be said that the court precluded Disney from cross-examining anyone.

In his reply brief, Disney asserts that through cross-examination he could have shown that the encounters with the Spinettas in their residential community were fortuitous, because he had been invited to the community by someone else, and that there was no probable cause for his arrest. This argument rings hollow. Cross-examination of Judge Spinetta would not have elicited evidence as to why *Disney* decided to go to Rossmoor or *Disney's* state of mind while there. In addition, whether there was probable cause for the arrest of Disney outside the A.F. Bray Building is immaterial; the point is

---

[7] Section 527.6 does not in itself guarantee the right of cross-examination. (See *Schraer, supra,* 207 Cal.App.3d at p. 733, fn. 6 ["a full-fledged evidentiary hearing with oral testimony from all sides may not be necessary in all cases"].) Furthermore, trial courts are empowered to control the mode of interrogation in civil cases. (Evid. Code, § 765.) While Evidence Code section 765 is not a basis for disregarding the statutory rules of evidence or fundamentally changing the nature of a trial (*Elkins, supra,* 41 Cal.4th at p. 1361), it may justify the court limiting cross-examination in a section 527.6 hearing in order to prevent the defendant from unduly harassing the complaining party.

not whether there was legal cause to arrest him, but that he refused the directive of the Judicial Protection Unit to pass through regular security in attempting to reenter the building in which Judge Spinetta was assigned. Indeed, the trial court indicated that the fact of Disney's arrest did not weigh heavily in its assessment of the evidence. What is more, Disney made the assertions of happenstance meetings and lack of probable cause at the hearing, and there is no indication of any specific evidence obtainable on cross-examination that would have made his assertions more credible.[8] Nor did Disney make an offer of proof as to whom he wished to cross-examine and what evidence he intended to elicit. He therefore waived his right to complain that the trial court should have allowed him to present the evidence he now claims he would have. (See *Heiner v. KMart Corp*. (2000) 84 Cal.App.4th 335, 344 [failure to make offer of proof precludes consideration on appeal of erroneous exclusion of evidence].)

4. Failure to Verify Petition

Relying on section 527, subdivision (a), Disney argues that Spinetta's "complaint" was not verified. Apparently, he refers to Judge Spinetta's petition for the TRO and three-year restraining order under section 527.6. Disney's contention has no merit, for several reasons.

First, Disney did not raise this issue in the trial court. The issue is therefore waived.

Second, Judge Spinetta did not proceed under section 527, subdivision (a), but under section 527.6, subdivision (c), which reads: "Upon filing a petition for an injunction under this section, the plaintiff may obtain a *temporary restraining order* in accordance with Section 527, *except to the extent this section provides a rule that is inconsistent*. A temporary restraining order may be issued with or without notice *upon*

---

[8] In his supplemental brief to this court, Disney asserts that "Defendant's (hypothetical) cross-examination would question if there was an irrational exuberance that morphed a controversial attorney (defendant) into a dangerous monster." He also points out generally that the credibility of the declarants was important. He does not

an affidavit that, to the satisfaction of the court, shows reasonable proof of harassment of the plaintiff by the defendant, and that great or irreparable harm would result to the plaintiff." (Italics added.) Thus, section 527.6 does not require a verified petition in order to obtain a TRO.

Third, even if section 527 applied, it does not require a verified complaint, but either a verified complaint *or* affidavits.[9] Here, Judge Spinetta provided the functional equivalent of affidavits with declarations submitted under penalty of perjury. (§ 2015.5.)

Fourth, as Judge Spinetta points out, the signature line on his petition states, "see signed declaration please," and his declaration, on which the petition is based, is signed under penalty of perjury. In effect, the petition was verified by Judge Spinetta's declaration.

Fifth, even if the petition had to be stricken for purposes of proof at the hearing, the testimonial declarations themselves contained evidence sufficient to support the TRO (whose issuance Disney does not contest) and the three-year restraining order.

5. Motion for Judgment

Lastly, Disney contends that deficiencies in Judge Spinetta's proof at the hearing justified the granting of a motion for judgment pursuant to section 631.8, on the grounds of insufficient evidence. Disney, however, did not make such a motion.

C. CONSTITUTIONAL ISSUES

Disney argues that the three-year restraining order operates as a prior restraint on his exercise of his constitutional activities and is thus beyond the jurisdiction of the trial court and void. (See generally *Alexander v. United States* (1993) 509 U.S. 544, 550 [a "prior restraint" includes an order that restricts speech in advance of it being made].) He

---

establish, however, that his cross-examination would have impugned the declarants' credibility.

[9] Section 527, subdivision (a) provides in relevant part: "A preliminary injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if the complaint in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds exist therefore."

divides his argument into several topics: public forum; free speech; overbreadth of injunction; equal protection; petition redresses; pursuit of profession; and courthouse security. We address each contention, although in a different order.

1. Free Speech

Disney contends that the restraining order violates his free speech right to criticize Judge Spinetta, relying on cases holding that a person may not be held in contempt of court for expressing dissatisfaction with court rulings or even impugning a judge's integrity. (*Bridges v. California* (1941) 314 U.S. 252, 263-264, 276 [reversal of contempt conviction for characterizing a judge's decision as outrageous]; *DeGeorge v. Superior Court* (1974) 40 Cal.App.3d 305, 312 [determining whether attorney's in-court conduct towards a judge constituted contempt]; *Lloyd v. Superior Court* (1982) 133 Cal.App.3d 896, 902 [no factual basis for contempt finding where attorney's letter to the editor, criticizing the judge's handling of a case, appeared in local newspaper]; *Standing Committee v. Yagman* (9th Cir. 1995) 55 F.3d 1430, 1438 [lawyers may freely criticize a judge if there is a reasonable factual basis for it].)

These cases are inapposite. Disney was not held in contempt of court for his public criticisms of Judge Spinetta or his rulings. Rather, Disney was ordered not to contact the judge or venture within 100 yards of him without submitting to courthouse security measures, because of the harassing and derogatory letters he sent directly to the judge and to the judge's wife at their home. (See *Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1409 [§ 527.6 restraining order upheld, where teenager's letters to his girlfriend's mother quoting song lyrics were not constitutionally protected because his intent was to ridicule and annoy].) Furthermore, the restraining order was based not only on Disney's written ridicule of Judge Spinetta and the court's decisions, but also on Disney's actions toward the judge: approaching the judge in public and yelling at him, appearing multiple times at functions in the Spinettas' residential community, and regularly glaring at the judge in his courtroom without official business. The restraining order does not impinge Disney's right to freedom of speech.

2. Public Forum

Disney declares that courts and county law libraries are public places, and the public has the right to attend trials. (U.S. Const., 6th Amend.; Cal. Const., art. I, § 15; § 124; Bus. & Prof. Code, § 6360.) He contends his visits to Judge Spinetta's courtroom were merely attempts to observe how well the judge was serving his purpose. (Citing *Kirstowsky v. Superior Court* (1956) 143 Cal.App.2d 745.) Implicit in his argument is that the restraining order is invalid because it restricts access to public places.

Disney is incorrect. The restraining order does not preclude anyone, let alone Disney, from attending public trials or going to the law library. It merely requires Disney to pass through regular security screening when entering the A.F. Bray Courthouse and, when on business in Judge Spinetta's courtroom, advising security personnel. Although the order does preclude Disney from going to Judge Spinetta's courtroom when he has no business there as an attorney of record, party, or witness, Disney fails to establish that this minor limitation on his freedom gives rise to any constitutional violation, particularly in light of his conduct toward the judge.

3. Overbreadth of Injunction

In a similar argument, Disney contends that the restraining order is overbroad geographically because he did not perpetrate offensive or dangerous conduct elsewhere in Martinez.[10] In particular, he contends that the order precludes him from going to the law library in the A.F. Bray Building and a post office purportedly within 100 yards of the courthouse. He does not demonstrate that he has any special connection to that particular post office or law library, or that he could not use a post office or law library elsewhere.

---

[10] Disney contends that "[j]udicial notice shows the 100 yard restrained area includes the three courthouse buildings and their courtrooms, the County Law Library and a Jurors' Assembly Room in the Bray Courthouse, the County Jail, the ten-story County Administration Building, the Superior Court Clerk's office, the Offices of the Tax Collector and Treasurer, a U.S. Post Office, streets, sidewalks, and public parking lots . . . and a McDonald's hamburgers." Although he has not properly requested judicial notice in this regard, we assume arguendo the accuracy of his assertion.

Moreover, the trial court was willing to narrow the injunction in this regard by striking the words "jobs or workplaces of the person" from the stay-away portion of the order, to clarify that Disney could go to the post office even though it was within 100 yards of Judge Spinetta's courtroom. Although this modification does not appear on the written order of injunction itself, Disney eschewed the court's invitation to submit a proposed order addressing his concerns and never objected to the final written order on the ground it failed to comport with the trial court's oral modifications. Disney cannot now complain that the order does not adequately reflect the changes that the court was willing to make to the proposed injunction.

In addition, the court offered Disney the opportunity to negotiate with Judge Spinetta's counsel any concerns he had regarding the geographical breadth of the injunction, including the impact of the 100-yard stay-away order on Disney's desire to attend a dance in Judge Spinetta's residential community. Disney rejected the court's invitation. Accordingly, Disney waived his arguments in this regard.

4. Pursuit of Profession

Disney contends that the 100-yard stay-away order has a devastating impact on his ability to practice law. However, he provides no evidence whatsoever that it has affected his practice of law in any way. Nor is such an inference reasonable in light of the terms of the injunction.

At the hearing, the court expressed its sensitivity to Disney's ability to practice law. In the words of the court, "the order should provide that it is not intended in any way to interfere with [Disney's] legitimate practice of [his] profession . . . in the buildings and property necessary for [him] to do so." The injunction specifically recognizes Disney's profession as a licensed attorney and allows him to enter the A.F. Bray Building: "*If and when* Defendant James H. Disney is visiting the A.F. Bray Building, located at 1020 Ward Street, Martinez, CA 94553, for any reason which would necessarily place him within 100 yards of Peter L. Spinetta, Mr. Disney must first pass through regular security screening. [¶] *If and when* Defendant James H. Disney has legitimate or official business in Judge Peter L. Spinetta's courtroom, as an attorney of

record, as a party, or as a witness, Mr. Disney must (1) first notify security screening personnel at the entrance to the A.F. Bray Building, 1020 Ward Street, Martinez, CA 94553, and (2) pass through regular security screening."

Thus, Disney is not precluded from practicing law, representing clients, or appearing as an attorney (or a party or witness) in the Contra Costa County Superior Court, including the A.F. Bray Building and even Judge Spinetta's courtroom. If he chooses, he may also visit the county law library, even though he will be within 100 yards of Judge Spinetta's courtroom, as long as he passes through regular security screening. He is not precluded from attending or using another law library. Disney fails to demonstrate any unconstitutional impingement on his right to practice his chosen profession.

5. Equal Protection

Disney contends: "A person restrained by a [section] 527.6 restraining order is in a condition of constructive custody, kept in tow for a length of time, like the compelling force of a probation or parole order. Such a person is without ability to obtain a discharge by payment of fine or serving the punishment. Injunctions, like the present, are language content neutral, hence they carry a greater force of censorship than does a legislative restraint affecting offensive speech." He claims he has no history of disturbing court proceedings, yet he is treated differently from other attorneys, and equality of treatment is guaranteed by the Fourteenth Amendment.

The Fourteenth Amendment to the United States Constitution does not guarantee that all persons are treated equally, regardless of their behavior. Disney provides no authority or logical argument for the proposition that the Equal Protection Clause ensures that an attorney who engages in the type of conduct perpetrated by Disney will be treated the same as an attorney who does not. He fails to establish a violation of his equal protection rights.

6. Petition Redresses

Disney also invokes the constitutional right of persons to assemble peaceably and to petition for redress of grievances. The restraining order, however, does not prohibit

Disney from entering the courts or representing clients or petitioning the government. He fails to establish that any limits placed on him in this regard violate his right to assemble peaceably or to petition for redress of grievances.

7. Courthouse Security

Disney contends that Deputy Willett and Sergeant Gregory joined with Judge Spinetta to restrain Disney's access to the courthouses under the mantle of promoting courthouse security. He contends that this case is "somewhat analogous" to the security issues in *New York Times Co. v. United States* (1971) 403 U.S. 713 (*New York Times*). In *New York Times*, the government failed to establish that national security interests justified the prior restraint of two newspapers, the New York Times and Washington Post, from publishing the classified "History of U.S. Decision-Making Process on Viet Nam Policy" (Pentagon Papers). We see no corollary between *New York Times* and the matter at hand.

Disney also contends a "*security* based exclusion order based on animosity is unlawful." (Italics in original.) For this proposition he cites *Korematsu v. United States* (1944) 323 U.S. 214 (*Korematsu*). In *Korematsu*, the court upheld the constitutionality of an order excluding persons of Japanese ancestry from a West Coast military area when the United States was at war with Japan. (*Id*. at p. 219.) Nothing in *Korematsu* compels reversal of the restraining order issued against Disney.

In sum, substantial evidence supports the findings of the trial court, the issuance of the restraining order was not an abuse of discretion, and the restraining order does not violate Disney's constitutional rights. Disney fails to establish that the court erred in issuing the three-year restraining order.

D. SUBSTANTIAL EVIDENCE SUPPORTING ATTORNEY FEE AWARD

Section 527.6, subdivision (i), authorizes the imposition of an award of attorney fees in favor of the prevailing party. Disney contends that the award is not supported by substantial evidence, arguing that a request for fees is a solicitation, not evidence. We review an attorney fee award for an abuse of discretion, where the factual basis for the

award is undisputed. (*Jones v. Union Bank of California* (2005) 127 Cal.App.4th 542, 549-550; *Shapiro, supra*, 96 Cal.App.4th at p. 912.)

In his petition, Judge Spinetta requested compensation for his attorney fees in the amount of $1,700. At the hearing, the court awarded Judge Spinetta, as the prevailing party, attorney fees in the amount of $1,200. There is no question that Judge Spinetta was the prevailing party, and Disney did not protest the amount of the award at the hearing. He therefore waived any objection he might have had in that regard, and he fails to persuade us that we can or should review the trial court's calculation of the award in the absence of his objection at the hearing.

III. DISPOSITION

The order is affirmed.

NEEDHAM, J.

We concur.

JONES, P. J.

GEMELLO, J.